STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 8, 2014
v	No. 311558 Wayne Circuit Court
JEROME TOOKES, Defendant-Appellant.	LC No. 11-010421-FH

Before: K. F. KELLY, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with a dangerous weapon (felonious assault), MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to 34 days, time served, for the felonious assault conviction, and two years in prison for the felony-firearm conviction. After oral argument before this Court, we remanded for an evidentiary hearing for the trial court to determine (1) whether defendant had standing to seek suppression of the gun evidence, i.e., whether he had a reasonable expectation of privacy (which depended on his status in the house searched), and (2) whether the homeowner granted consent for the search. The trial court promptly conducted the hearing and made its findings of fact on the record. In light of those findings, we affirm.

Initially, defendant's primary argument was that the trial court erred by refusing to take testimony at an evidentiary hearing to determine the issue of standing on defendant's motion to suppress, and by denying defendant's motion to suppress. Our remand and the subsequent evidentiary hearing remedied that issue.

Both the Fourth Amendment of the United States Constitution and article 1, § 11 of the Michigan Constitution protect persons against unreasonable searches and seizures. *People v Bolduc*, 263 Mich App 430, 437; 688 NW2d 316 (2004). The Supreme Court has held that the "Michigan Constitution is to be construed to provide the same protection as that secured by the Fourth Amendment, absent compelling reason to impose a different interpretation." *People v Slaughter*, 489 Mich 302, 311; 803 NW2d 171 (2011) (quotation marks and footnotes omitted). It is undisputed that the search warrant requirement is not necessary if police have consent to perform the search. *United States v Matlock*, 415 US 164, 170-171; 94 S Ct 988; 39 L Ed 2d 242 (1974).

At the conclusion of the evidentiary hearing on remand, the trial court made the requisite findings of fact on the two disputed issues. Specifically, the trial court found that the owner of the home, who also resided there, gave police officers consent to search the home. The trial court's finding was explicitly based on its credibility determinations, and since facts in the record support the trial court's finding, we cannot conclude that it was clearly erroneous. MCR 2.613(C); *People v Lemmon*, 456 Mich 625, 642-644; 576 NW2d 129 (1998) (findings of fact by the trial court may not be set aside unless clearly erroneous or unless there are exceptional circumstances, such as testimony that contradicts indisputable facts or is patently incredible, that make it appropriate to take the issue of witness credibility away from the trier of fact). In light of this factual finding, we hold that the police lawfully entered and searched the home without a warrant because the homeowner's consent eradicated the need for a warrant. See *Matlock*, 415 US at 170-171; *People v McKinney*, 65 Mich App 131, 140-141; 237 NW2d 215 (1975). And, this is true as to the search of the closet in the homeowner's son's room, as there is no evidence that the son objected to the search, and the trial court's finding that defendant had no access to the closet in that bedroom was not clearly erroneous. Thus, the search of the closet was valid as to all occupants of the home. See *Fernandez v California*, __ US __, __; 134 S Ct 1126, 1133; __ L Ed 2d __ (2014); *Matlock*, 415 US at 170-171; *McKinney*, 65 Mich App at 140-141. Consequently, the motion to suppress was properly denied.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray
/s/ Michael J. Riordan